RSA 82/1999
BEFORE
HON'BLE JUSTICE MR I. A. ANSARI

This second appeal has arisen out of the judgment and decree, dated 29.04.1999, passed, in Title Appeal No. 6/1997, by the learned Civil Judge (Senior Division), Dhubri, allowing the appeal and reversing thereby the judgment and decree, dated 15.12.1997, passed, in Title Suit No. 288/93, by the learned Civil Judge (Junior Division), Dhubri, whereby the trial Court had dismissed the plaintiff's suit.

2. Before I come to the substantial questions of law, which have been raised in this second appeal, necessary it is to take note of the respective cases of the parties concerned.

3. The plaintiff's case is, in brief, thus: The plaintiff is the landowner of the land, measuring 50 Bighas 2 Kathas, at village-Ravatari Part-I, covered by Dag No. 244, of Khatian No. 208, described in the schedule to the plaint, and has been in possession thereof by constructing his dwelling house thereon and raising various crops on the remaining land. The defendants Nos. 5, 6, 7, 8, 9, 10, 11 and 12, who have no right, title or interest over the suit land, threatened, on 28.08.93, to dispossess the plaintiff from the suit land. These defendants also started telling publicly that the suit land had been made Government's Khaas land and that the defendant Nos. 5, 6, 7, 8, 9, 10, 11 and 12 had already made arrangements to get the suit land made Tarju Bahira with the help of the defendant No. 1, 2, 3 and 4. On hearing as to what the defendant Nos. 5 to 12 had been telling the people around their locality, the plaintiff rushed to the office of the defendant No. 4, namely, Asstt. Settlement Officer, South Salmara, and came to know from the said office's staff that in P.L. Case No. 376/1994, the defendant No. 4 had passed an order cancelling the Khatian, which had been granted to the plaintiff, and making the suit land a Khaas land of the Government. The cancellation of the plaintiff's Khatian is illegal and without jurisdiction inasmuch as the Khatian was validly issued in favour of the plaintiff and it has been cancelled by the defendant Nos. 1 to 4 without giving any opportunity to the plaintiff to have his saying in the matter. If the Court does not interfere, the defendant Nos. 5 to 12 would forcibly dispossess the plaintiff from the suit land. The plaintiff accordingly prayed that (i) the suit be decreed declaring that the plaintiff has right, title and interest over the scheduled land; (ii) the suit be decreed declaring that the defendant Nos. 1 to 4 had/ have no right to cancel the Khatian No. 208 in P.L. case No. 367/74; (iii) the suit be decreed declaring that the order, in P.L. case No. 367/74, was not as per provisions of law and not binding; (iv) the suit be decreed declaring that the defendant No. 1 to 4 are legally bound to cancel order in P.L. case No. 367/74 and correct record of rights accordingly; (v) A permanent injunction be granted restraining the defendant Nos. 1 to 4 from issuing T.B. patta to the defendants No. 5 to 12 and thereby dispossessing the plaintiff from the scheduled land of the plaint; (vi) costs etc. and any such other reliefs which the plaintiff may be found entitled to.

4. The defendants contested the suit by filing written statement, their case being, in brief, that the plaintiff had not been in possession of the suit land or any part thereof and, hence, the question of his having been threatened by defendant Nos. 5 to 12 with dispossession from the suit land was imaginary, the defendant Nos. 5 to 12 have been possessing the land, measuring about 38 Bighas in different plots, by cultivating the same, the defendant No. 1 had collected land revenue from the defendant Nos. 5 to 12 and issued accordingly receipts to the defendant No. 5. The suit of the plaintiff has, therefore, no merit and deserves to be dismissed.

5. Several issued were framed in the suit and decided in favour of the plaintiff, by the learned trial Court, except issue Nos.3, 4. 5 and 6. These four issues are reproduced hereinbelow:

\3. Whether the land is a Sarkari Khas land?
4. Whether the plaintiff has possession over the suit land?

5. Whether the plaintiff is entitled to get decree as prayed for?
6. To what relief(s), if any, the parties are entitled to get?\

6. Having recorded the evidence adduced by the parties, the learned trial Court concluded that the suit land had been made Khaas land of the Government by properly cancelling the plaintiff's Khatian (Exhibit 1). The plaintiff has not been, contrary to his claim, in possession of the entire suit land. Based on the conclusions, so reached, the learned trial Court held that the reliefs, as had been sought for by the plaintiff, were not entitled to be received by him. Having arrived at this finding, the learned trial Court dismissed the suit.

7. In the appeal preferred by the plaintiff, the learned appellate Court held, inter alia, that the cancellation of the Khatian, which had been granted in favour of the plaintiff, was not in accordance with law and, hence, the plaintiff was entitled to the reliefs, which he had sought for. The appeal, as already indicated above, was, therefore, allowed and the plaitiff's suit was decreed. Aggrieved by the decree, so granted by the learned first appellant Court, the defendant Nos. 5 to 12 are, now, before this Court with the help of this second appeal.

8. I have heard Mr. S. R. Bhattacharjee, learned Senior counsel, appearing on behalf of defendant Nos. 5 to 12-appellants herein, and Mr. B. K. Goswami, learned Senior counsel, for the plaintiffs-respondents. None has appeared for the remaining defendants-respondents.

9. The substantial questions of law, raised in this second appeal, are as follows:

(i) Whether the learned First Appellant Court committed grave error of law in holding that the cancellation of the plaintiff's Khatian was illegal and that the plaintiff was entitled to the decree, as have been sought for by them,

(ii) to what relief or reliefs, if any, the parties were entitled to, and

(iii) whether the learned First Appellate Court was correct in decreeing the suit, in terms of the relief, to the plaintiff, which included relief of injunction against the defendant Nos. 5 to 12, when the learned First Appellate Court itself came to the conclusion that the plaintiff was in possession of more than 10 Bighas of the entire suit land.

10. Bearing in mind the substantial questions of law, which have been raised in the second appeal, when I come to the merit of the appeal, what becomes necessary to point out is that it is not in dispute,, in the case at hand, that with the abolishment of the system of Zamindari, the rights of the parties over the land, in question, are governed by the provisions of the Assam Land and Revenue Regulations. The plaintiff, in the present case, proved Exhibit 1 as the Khatian, which had been issued by the Government in his favour in respect of the entire suit land. This Khatian was, admittedly, cancelled by the defendant No. 4. I have closely examined the written statement filed by the defendant Nos. 1 to 4. Nowhere in the written statement, the defendant Nos. 1 to 4 have claimed that no Khatian, as had been asserted by the plaintiff, was earlier granted in his favour. There is also no assertion, in the written statement of these defendants, that the issuance of the Khatian in favour of the plaintiff was illegal and/ or that the cancellation of this Khatian by the defendants (defendant Nos. 1 to 4) was done after giving the plaintiff an opportunity of having his say in the matter and/ or that the cancellation of Khatian is in accordance with law. In fact, what these defendants merely asserted was that the plaintiff had no right, title and/ or interest over the suit land. No statement was made, in the written statement of defendant Nos. 1 to 4, challenging the validity of the Khatian. Thus, the fact that the Khatian was cancelled by these defendants, without giving any opportunity to the plaintiff, was never disputed by these defendants. When I turn to the written statement of the defendant Nos. 5, 6, 7, 8, 9, 10, 11 and 12, I do not find any assertion, in their written statement, that the Khatian had not been issued in favour of the plaintiff and/ or that the issuance thereof was illegal and/ or that the cancellation thereof was in accordance with law. In these circumstances, it was really not necessary for the learned tria

l Court to call for the records of the P.L. case, when the authority concerned had not asserted at all that its act of cancelling the Khatian of the plaintiff was after giving notice to the plaintiff and/ or that the cancellation of the Khatian was legal, proper and/or correct.

11. In the backdrop of what have been indicated above, when one comes to the plaint, one can have no reservation in holding that the plaintiff's prayer that i) the suit be decreed declaring that the plaintiff has right title and interest over the suit land, that ii) the suit be decreed declaring that the defendant Nos. 1 to 4 had/ have no right to cancel illegally the Khatian No. 208, that iii) the suit be decreed declaring that the order, in P.L. case No. 367/74, was not as per provisions of law and not binding, that iv) the suit be decreed declaring that the defendant No. 1 to 4 are legally bound to cancel the order passed in P.L. case No. 367/74 and correct record of rights accordingly, that v) a permanent injunction be granted restraining the defendant Nos. 1 to 4 from issuing T.B. patta to the defendants No. 5 to 12, were wholly justified and warranted by the facts admitted by the defendants themselves. Viewed from this angle, it is clear that the learned trial Court's finding that the suit land was a Government Khaas land was an erroneous finding and the learned appellate Court committed no illegality in reversing this finding.

12. As regards the question as to who had been in possession of the suit land and/ or any part or portion thereof, it is pertinent to note that the plaintiff had claimed that he had been in possession of the entire 50 Bighas of the suit land. As against this case of the plaintiff, the claim of the defendant Nos. 5 to 12 was that they had been in possession of 38 Bighas of the suit land. This apart, the plaintiff had himself admitted, during his cross-examination, that he had allowed the father of the defendant Nos. 5 to 12 to remain in permissive possession of the land. Moreover, plaintiff's witness Nos. 1 and 2 had admitted, in their evidence, that the plaintiff had permitted the father of the defendant Nos. 5, 6 and 7 to stay on the suit land and, in fact, the father of these defendants died, while he was still in possession of the suit land, and his graveyard is located on the suit land. In the face of these admitted pieces of evidence, there could have been no escape from the conclusion that the defendant Nos. 5, 6, 7, 8, 9, 10,11 and 12 had been in possession of some parts of the suit land. This impression gets strengthened, when I notice that the unshaken evidence of the defendant No. 1 is that he, along with the other defendants, had been in possession of 38 Bighas of the suit land. This assertion of the defendant No. 1 had been supported by the evidence of defendant Nos. 2 and 3. Above all, the plaintiff himself has admitted, in his evidence, that he has been in possession of 10 Bighas of the suit land and that he had moved into the land barely two years before institution of the suit.

13. In the circumstances, as indicated above, the learned first Appellate Court's finding that the plaintiff had been, out of the total land measuring about 50 Bighas 2 Kathas, in possession of 10 Bighas of the suit land and that the defendant Nos. 5 to 12 have been in possession of the remaining 40 Bighas of land cannot be said to have been suffering from any infirmity, legal or factual.

14. What surfaces from the above discussion is that the cancellation of the Khatian, which had been granted in favour of the plaintiff, was wholly illegal; but, at the same time, the plaintiff had been in possession of only 10 Bighas of the entire suit land. In such circumstances, the necessary question to be determined is as to what relief or reliefs the plaintiff was really entitled to? In this regard, I have already pointed out as to what reliefs the plaintiff was entitled to. However, as far as the question of possession of the suit land was concerned, the plaintiff was, admittedly, not in possession of more than 10 Bighas of land. In such circumstances, the question of decreeing the suit in its entirety and thereby granting permanent injunction restraining the defendant Nos. 5 to 12 from dispossessing the plaintiff from the land, which has been in their occupation, could not have been granted, for, granting of such an injunction would mean illegally throwing out the defendant Nos. 5 to 12 or would amount to illegally dispossessing the defendant Nos. 5 to 12.

15. It needs to be pointed out that in the case at hand, the learned appella

te Court, while allowing the appeal, decreed the suit in favour of the plaintiff -appellant. It is also necessary to take note of the fact that while decreeing the suit in favour of the plaintiff, the Court should specify as to what relief (s) have been granted in favour of the parties concerned. In the case at hand, the learned First Appellate Court has not indicated clearly as to what relief(s) had been granted, but its judgment go to show that the plaintiff's suit was de creed, in his favour, in its entirety; whereas the plaintiff, as already indicat ed above, was not so entitled to.

16. In the result and for the reasons discussed above, this appeal partly su cceeds. While the plaintiff's suit shall stand decreed in respect of his prayer s as indicated hereinabove, the plaintiff is hereby declared to be in possession of 10 Bighas of the suit. As no demarcation of the land, in possession of the p arties concerned, has been done in the suit and as no such declaration/demarcati on was sought for by either party, the question of declaring possession of the defendant Nos. 5 to 12 over a portion of the suit did not arise at all. The imp ugned decree shall, therefore, stand modified to the extent as indicated hereina bove and the substantial questions of law, raised in the appeal, shall stand ans wered accordingly.

17. Before parting with this appeal, it is, however, made clear that the dec ree, granted in favour of the plaintiff, shall not be treated as a bar for the d efendant Nos. 1 to 4 to pass appropriate order(s) on the Khatian, which had bee n issued in favour of the plaintiff, by taking recourse to the relevant provisio ns of law.

18. With the above observations and directions, this appeal shall stand disp osed of.

19. Send back the LCR.